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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,657	04/05/2001	Richard E. McNutt	ODS/035	5396
1473	7590	05/05/2006	EXAMINER	
FISH & NEAVE IP GROUP ROPES & GRAY LLP 1251 AVENUE OF THE AMERICAS FL C3 NEW YORK, NY 10020-1105			NGUYEN, BINH AN DUC	
		ART UNIT		PAPER NUMBER
				3713

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	C
	09/827,657 Examiner Binh-An D. Nguyen	MCNUTT ET AL. Art Unit 3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 March 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 2-4,6-10,12-14,16-18,20-24 and 26-28 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,5,11,15,19 and 25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

The Request for Continued Examination filed March 15, 2006 has been approved. The Amendment filed March 15, 2006 has been received. According to the Amendment, claims 1-28 have been amended. Note that, claims 2-4, 6-10, 12-14, 16-18, 20-24, and 26-28 have been previously withdrawn due to non-elected species; and claims 1, 5, 11, 15, 19, and 25 have been examined on the merits. Currently, claims 1-28 are pending in the application. Acknowledgment has been made.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 11, 15, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Stronach (6,722,980).

Referring to claims 1 and 15, Stronach teaches a method and system for recognizing a wagerer (game player) of an interactive wagering application implemented at least partially on user equipment comprising: user equipment (wagering terminal 120, Figs.2-4; 3:54-4:57, 13:66-14:19) configured for receiving racing data from a racing data provider (110, Fig.1), wherein at least a portion of the racing data

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originates from at least one race track where races corresponding to the racing data are being run (3:30-51; 8:23-50); allowing a wagerer to place a parimutuel wager on one of the races (4:43-57); a wagering control system configured for selecting a wagerer, and determining if the wagerer is to be recognized based on one criterion of a plurality of criteria, wherein each criterion of the plurality of criteria is associated with a different incentive; and when the wagerer is determined to be recognized based on the one criterion, providing an incentive to the wagerer (game player) (10:66-11:14). **Note that, the claimed different incentive related to each criterion are inherent the prize selection algorithm of Stronach wherein the prize is selected according to every certain amount of wager submissions, and further, payout tables maybe provided for the wager type other than the win wager type (11:5-14; 17:1-4).**

Referring to claims 11 and 25, Stronach teaches providing the incentive to the wagerer comprises providing a discount on wagering service, i.e., credit is a discount (10:66-11:5).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stronach in view of Acres et al. (6,364,768).

Stronach teaches all limitations of claims 1, 11, 15, and 25 above. Stronach does not explicitly teach the limitation of determining if the to be recognized wagerer is a VIP (claims 5 and 19).

Acres et al., however, teaches a method and system for recognizing a wagerer (game player) of an interactive wagering application comprising: determining if the to be recognized wagerer is a VIP (8:35-61).

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to provide the player tracking system of Acres et al. to the interactive racing system and method of Stronach to provide a friendly interactive gambling environment to encourage frequent players to come back as well as attract new players thus increase profit.

### ***Response to Arguments***

Applicant's arguments filed March 15, 2006 have been fully considered but they are not persuasive.

The applicant argued regarding claims 1 and 15 that Stronach does not show or suggest that each criterion of a plurality of criteria is associated with a different incentive; and when a wagerer is determined to be recognized based on a criterion, an incentive is provided to the wagerer that is associated with that criterion (applicant's remark, page 9, lines 4-29) are deemed not to be persuasive. In the wagering system of Stronach identifies every certain amount of wager submissions and using a prize selection algorithm to determine a prize according to the particular amount of wager

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submission; further, the selection algorithm may be a random seed. Therefore, the prize (or incentive) determined by the algorithm for every certain amount of wager submissions should be different from time to time. Thus, Stronach clearly anticipated applicant's claimed invention.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Binh-An D. Nguyen whose telephone number is 571-272-4440. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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XUAN M. THAI  
SUPERVISORY PATENT EXAMINER

TC37D